Filed 3/27/19 In re D.G. CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re D.G., a Person Coming Under the Juvenile Court Law.	
STANISLAUS COUNTY COMMUNITY SERVICES AGENCY, Plaintiff and Respondent, v. Q.S., Defendant and Appellant.	F077976 (Super. Ct. No. 518201) **OPINION**

THE COURT[*]

APPEAL from an order of the Superior Court of Stanislaus County. Ann Q. Ameral, Judge.

Q.S., in pro. per., for Defendant and Appellant.

John P. Doering, County Counsel, and Maria Elena Ratliff, Deputy County Counsel, for Plaintiff and Respondent.

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[*] Before Poochigian, Acting P.J., Detjen, J. and DeSantos, J.

Appellant Q.S. is the paternal half sister of now one-year-old D.G., who was made a dependent of the juvenile court in May 2018 and placed in foster care. The juvenile court denied D.G.'s parents reunification services and set a Welfare and Institutions Code section 366.26 hearing[1] in August 2018 to implement a permanent plan of adoption with D.G.'s foster parents. In July 2018, appellant filed a modification petition under section 388 (section 388 petition) requesting placement or visitation. The court summarily denied appellant's request for placement but granted her visitation. She contends D.G. should have been placed with her first and she should be able to adopt her. We affirm.

PROCEDURAL AND FACTUAL SUMMARY

Dependency proceedings were initiated in January 2018 when D.G. was born prematurely at 33 weeks. Her mother, A.G. (mother), had given birth to eight children before her and none of them were in her custody. Mother identified Roosevelt S. as D.G.'s father and genetic testing established his biological paternity. Appellant is Roosevelt's adult daughter.

The Stanislaus County Community Services Agency (agency) took D.G. into protective custody and filed a petition under section 300, alleging she came within the juvenile court's dependency jurisdiction under subdivisions (b)(1) (failure to protect) and (j) (abuse of sibling). The agency placed her in foster care upon her discharge from the hospital in February 2018.

The juvenile court ordered D.G. detained and set a combined hearing on jurisdiction and disposition (combined hearing). Mother and Roosevelt appeared at the detention hearing. The court told them it preferred to place D.G. with relatives and instructed them to refer any relatives interested in placement to the placement specialist. The court also told them the placement process took some time, so the sooner relatives came forward the sooner D.G. could be placed with family.

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[1] Statutory references are to the Welfare and Institutions Code.

In its report for the combined hearing, the agency recommended the juvenile court exercise its dependency jurisdiction and deny both parents reunification services, Roosevelt because it would not be in D.G.'s best interest (§ 361.5, subd. (a)), and mother because the court terminated her reunification services and parental rights in dependency proceedings involving D.G.'s siblings. (§ 361.5, subd. (b)(10) & (11).) The agency also informed the court the placement specialist sent letters to maternal and paternal relatives regarding relative placement. It is not clear from the record whether the specialist mailed a letter to appellant. Two paternal half sisters are listed as family members, but their names are redacted and there is no indication a letter was sent to them.

In May 2018, following a contested combined hearing, the juvenile court sustained the petition, denied the parents reunification services as recommended and set a section 366.26 hearing for August 2018.

In July 2018, appellant filed a section 388 petition, requesting the juvenile court place D.G. in her custody or continue the section 366.26 hearing and grant her visitation until placement could be arranged. She alleged as changed circumstances she completed the Resource Family Approval (RFA) training and asserted placement with her served D.G.'s best interest because it preserved her family connections.

Appellant attached a declaration to her section 388 petition, identifying herself as the 37-year-old half sister of D.G. She lived in a four-bedroom home with her five children who ranged in age from six to 17 years. She received disability income for an anxiety disorder which had stabilized. She worked for a ridesharing company and had a car and insurance. She was involved once with child protective services in 2003 to 2004 because her two oldest children were molested by a family member. She completed voluntary family maintenance services. She was convicted in 2007 of vandalism and successfully completed probation. In 2014, she was charged with misdemeanor burglary and successfully completed informal probation. As soon as she found out D.G. was in the agency's custody, she made efforts to have D.G. placed with her. On June 6, 2018,

social worker Brandee Alfaro visited her home. Social worker Shasta Neil visited her home twice afterward and met with her. Neil told her the crib she had was too old and she needed a new one to have her home approved. On June 16, 2018, she completed the RFA training and attached the certificate of completion to her petition. She also completed a LIVESCAN and was in the process of getting her criminal convictions expunged. Other than the crib, Neil told her there were no safety concerns, but she needed to get the criminal convictions expunged. Neil did not believe, however, they would disqualify appellant for placement because they were "minor misdemeanors." However, Neil did not believe appellant's income was sufficient to support D.G. Appellant was confused and incensed by that statement.

The juvenile court set a hearing on August 9, 2018, to determine whether to conduct an evidentiary hearing on appellant's section 388 petition.

The agency filed an opposition to appellant's section 388 petition. Alfaro told appellant she was not guaranteed placement and she would not be considered until she completed the entire RFA process. In addition, the agency was concerned about appellant's criminal history, which had not been exempted, and her financial status. It was also concerned about her willingness to provide D.G. proper medical care because she considered medication a form of "sorcery." In addition, she disciplined her children with corporal punishment. As for visitation, the agency instructed appellant to contact the visitation center to arrange monthly visits, but she had not done that and D.G. had only seen her once. The agency believed it would be detrimental to D.G. to remove her from her foster family to place her with appellant.

At the hearing on August 9, 2018, Alfaro told the juvenile court appellant had not completed the RFA process and minor's counsel opposed appellant's request for placement. Appellant insisted she completed the process and was just waiting for the last inspection of her home. She said she would not spank D.G. The court denied appellant an evidentiary hearing on her section 388 petition but granted her visits and ordered the

agency to complete the RFA process. The court also confirmed the section 366.26 hearing date of August 31, 2018. In the agency's report for the section 366.26 hearing prepared after the hearing on the section 388 petition but contained in the record, the agency recommended the court terminate parental rights and establish a permanent plan of adoption for D.G. with her foster parents.

DISCUSSION

Appellant appears in this appeal in propria persona. She contends the juvenile court and the agency failed to afford her relative placement preference by not placing D.G. with her. Therefore, the court's order denying her section 388 petition is error.[2] We disagree.

Dependency law favors placing a child with relatives. When a child is first removed from parental custody, the social service agency is required to identify and locate adult relatives, including adult siblings, and explain the placement options to them. (§ 309, subd. (e)(1)(A) & (B).) Certain relatives are also given preferential consideration for placement. Adult half siblings, such as appellant, are included among those relatives. (§§ 361.3, subd. (c)(2), 16002, subd. (g).)

The relative placement preference is set forth in section 361.3, subdivision (a) and provides that "[i]n any case in which a child is removed from the physical custody of his or her parents ..., preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative ...." The relative placement applies when a child is taken from his parents and is placed outside the home pending the determination whether reunification is possible. It also applies to placements made after

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[2] Appellant's opening brief consists of a two-page typewritten letter, which does not conform to the California Rules of Court, rule 8.204(a)(1)(B). While we may deem arguments that do not conform to court rules abandoned, we elect to address the merits of appellant's claim of error.

the dispositional hearing, even when reunification is no longer ongoing, whenever a child must be moved. (*In re A.K.* (2017) 12 Cal.App.5th 492, 498.)

"[P]referential consideration under section 361.3 'does not create an evidentiary presumption in favor of a relative, but merely places the relative at the head of the line when the court is determining which placement is in the child's best interests.' [Citation.] In other words, when a child is taken from his [or her] parents' care and requires placement outside the home, section 361.3 assures an interested relative that his or her application for placement will be considered before a stranger's request." (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863.) Thus, the relative placement preference is not "a relative placement *guarantee.*" (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 798.)

Appellant contends the agency never sought out Roosevelt's relatives for placement. The record however indicates otherwise. The placement specialist identified seven paternal relatives, including two half sisters. Presumably, appellant was one of those half sisters and was notified because she initiated the placement process. Aside from the reference to "half sisters," there is no specific mention of appellant in terms of how or when she was notified that D.G. was detained. Nor is there any information about her contacts with the agency. Appellant offers information about her placement efforts and interactions with the agency in her opening brief. However, that information is not part of the appellate record and was not considered by the juvenile court. Consequently, we cannot consider it. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1239-1240.)

In July 2018, appellant filed a section 388 petition seeking placement. Section 388 permits any person having an interest in a child who is a dependent child of the juvenile court, upon grounds of changed circumstances or new evidence, to petition the court for a hearing to change, modify or set aside any order of the court previously made. (§ 388, subd. (a)(1).) The moving party bears the burden of showing by a preponderance of the evidence there are changed circumstances or new evidence and that

a change in the court's order would serve the child's best interest. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Although the juvenile court must liberally construe a section 388 petition in favor of its sufficiency, it may deny the petition without an evidentiary hearing if it finds the petition fails to make a prima facie showing of a change in circumstances requiring a changed order and the requested change would promote the best interests of the child. (Cal. Rules of Court, rule 5.570(a); *In re Justice P.* (2004) 123 Cal.App.4th 181, 189.)

Here, the juvenile court summarily denied appellant's section 388 petition without conducting a hearing because she failed to make a prima facie showing that her circumstances had changed such that placing D.G. with her would serve D.G.'s best interests. We review the juvenile court's summary denial of a section 388 petition for abuse of discretion. (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) An abuse of discretion occurs when the juvenile court has exceeded the bounds of reason " ' "by making an arbitrary, capricious or patently absurd determination." ' " (*In re Stephanie M., supra,* 7 Cal.4th at p. 318.) We find no abuse of discretion.

As changed circumstances, appellant alleged she completed the RFA process. However, she had not completed it. Consequently, she failed to satisfy the first requirement for bringing a modification petition under section 388, i.e., changed circumstances. The juvenile court could have summarily denied her petition on that basis alone. Instead, the court also considered whether placing D.G. with appellant served D.G.'s best interests and determined it did not. By the time appellant brought her petition before the court, D.G. had been in the care of her foster parents for approximately five months, essentially since birth, and the foster parents wanted to adopt her. Appellant, on the other hand, had only visited with her once. To remove D.G. from the only family she knew to place her with appellant, a practical stranger, albeit a close relative, would have been harmful to her rather than beneficial. Further, since the agency was not contemplating a change in her placement at that time, appellant's status as a relative with

placement preference was not relevant. Nevertheless, appellant's status as D.G.'s half sibling was relevant and important, which is why the court ordered visitation.

DISPOSITION

The order is affirmed.